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P.O. BOX 2550				
SALT LAKE CITY, UT 84110				
EXAMINER				
SHAY, DAVID M				
ART UNIT		PAPER NUMBER		
3735				
NOTIFICATION DATE		DELIVERY MODE		
01/10/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/692,893

Applicant(s)

SAVAGE, KENT W.

Examiner

david shay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 31, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25 and 56-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25 and 56-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date October 31, 2007
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Applicant argues that the phrase in claim 1 is not new matter with the cancellation of the term "from the plurality of light sources" therefrom and points to paragraph [0040] for support. The examiner must respectfully disagree. The value of 2,500 lux only occurs once in the originally filed disclosure (paragraph [0026]), and there is no distance whatsoever associated with this portion of the disclosure, nor is this luminance value discussed with respect to the LED embodiment. Thus this argument is not convincing. Claims 21-25 were erroneously included in this rejection.

With regard to the indefiniteness rejections, it is unclear what type of input device is excluded by this recitation, since any type of input device can input data pertaining to the subject. Thus the exact "configuration" of the input device that would prevent the input of e.g. subject data, is unclear.

With respect to the indefiniteness rejection of claims 63 and 79, in particular, applicant argues that the language of claim 63: "device is configured to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn"; indicates "that the amount of therapeutic light delivered to the subject **may**, instead of being merely controlled, simulate gradually decreasing light at dusk or simulate gradually increasing light at dawn" (emphasis added). However, it is well settled that "claim scope is not limited by

claim language which suggests or makes optional but do not require steps to be performed, or by claim language that does not limit a claim to a particular structure.” (MPEP 2111.04). Thus the “configured to” language, which by applicant's own statement merely indicates that the function may be performed, is indefinite.

As to the Marsh device, applicant argues the traffic light embodiment of Marsh. However, as already set forth, it is not only the traffic light embodiment, but also the EXIT sign and flash light embodiments, which the examiner is reading on the claims. Clearly the “EXIT signs, light bulbs, and mountable lamps” are all “hand-held” as they are capable of being held in the hand. If desired the examiner can provide affidavit evidence that he has seen mountable lamps, light bulbs, and EXIT signs held in the hand well prior to 1995, for example. Thus these devices are clearly “hand-held” within the broadest reasonable definition of the term. Any flash light version of Marsh would read on the light output requirement by the same analysis as Bamber et al. provided previously.

Turning to Kulebs, applicant argues that “Kulebs does not anticipate every element of amended claim 83”. The examiner submits that as Kulebs does not disclose any unusual method of moving the umbrella from place to place (e.g. balancing it on the head), one of ordinary skill in the art would readily understand that the device would be moved about in the conventional fashion: by being carried (held) in the hand. Thus the device of Kulebs is undeniably “portable”. Applicant has stated that white light is suitable for ocular therapy, clearly applicant cannot be including the level of illuminance, in the term “suitable for ocular therapy” as this property of the light is specifically excluded in the claim language itself: “light sources...that output light **suitable for ocular therapy and of about 2,500 lux...**” (emphasis added); applicant had further

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provided no general disclosure concerning, nor particular modification to effect the output of “white light” by the CCFL bulbs, therefore the CCFL bulbs of Kulebs are considered to output “white light” which is suitable for ocular therapy in the same manner as the CCFL bulbs of applicant. The examiner respectfully notes that the shaft portion of the Kulebs device covers the lights when the umbrella is closed and also serves as a portion of the base which supports the device. Thus claims 83 and 85 are clearly anticipated by Kulebs. The cross base rests flat on the ground, as can be seen from Figures 2B and 2C, thus anticipating claim 84.

Concerning the rejection under 35 USC 103, applicant argues that the one of ordinary skill in the art would not consider the output of e.g. hand held computers “suitable for ocular light therapy”. This argument is not convincing. As set forth above and in the previous office action, the wording applicant has chosen clearly shows that the suitability for ocular therapy cannot rest in the intensity of the light, but the spectral distribution. As there is no discussion whatsoever in the originally filed disclosure what renders light “suitable for ocular therapy” one must rely on the prosecution history for the definition of such a term, and this indicates that “white light” as would be generated by white background on a PC, cell phone, or other CCFL backlit screen, would be “suitable for ocular therapy”. Thus, the illuminance being specifically excluded from the characteristics of light “suitable for ocular therapy”, does not affect claims which do not recite a particular range of illuminance.

The examiner has taken official notice of the use of clamshell-type Cases, which are notorious in the art for smaller Computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display; and the include an inverter, since these are

needed for running CCFLs from DC sources. Applicant has not challenged the examiner's holding, thus this is considered to be admitted prior art (MPEP 2144.03).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The amendment filed October 17, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "output light...of about 2,500 lux or less at a distance of about 6 inches to about 12 inches" (October 17, 2006).

Claims 1-20, and 57-72 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on "hardware in the data processor" and "output light...of about 2,500 lux or less at a distance of about 6 inches to about 12 inches from the plurality of light sources".

Claims 65-68, 72, 78, 79, 81-85, 88, and 91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 65-68, 72, 78, 79, 84, 85, 88, and 91 are indefinite as they fail to further limit the claim from which they depend, as what further structural limitation is intended to be expressed by claiming the type of data input or the devices the processor is envisioned to control and the

manner in which it is envisioned to control them is unclear and therefore what further limitation is intended to be implied is unclear.

Claims 87-89 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whitcher.

See figure 3 and column 1, line 31 to column 6, line 23.

Claims 1-5, 11, 13, 18-21, 56, and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-15; column 1, line 54 to column 4, line 39 and column 8, line 65 to column 12, line 22.

Claims 1, 7-12, 19, 20, 56-62, 64-68, 70-72, 83-89, and 93-95 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pederson et al.

Claims 83-88 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kuelbs.

See figures 1-4C, 10 and 11; column 11 line 30-60; column 3, lines 49 to column 10, line 68; column 14, line 28 to 65; and column 16, lines 19 to 45.

Claims 83-85, 87, 88, and 93-97 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Yano et al.

See figures 14A to 22C and column 8, line 3 to column 18, line 20.

Claims 1, 2, 4-6, 13-18 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al, HP Jornada 700 Series Handheld PC Users Guide and the admitted prior art that inverters are needed for running CCFLs from DC sources. Whitcher et al teach a handheld device which outcast a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Arao et al teach the use of

multiple CCFLs and reflectors in a light output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which has already been taken, to include means for receiving data from external sources, such as disk drives, since these are notorious devices routinely included in computers, official notice of which is hereby taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, since this conserves battery power, as shown by HP Jornada 700 Series Handheld PC Users Guide, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Claims 1-3, 12-21, 24, 25, 56-69, and 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Terman et al and the admitted prior art that employing a clamshell-type case, is notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the

programming, lighting, and control devices of Terman et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the programming or peripherals and to include multiple CCFLs, since this would provide more even illumination of the screen, or to employ the device of Whitcher et al as the driver for the output of Terman et al, since Terman et al teach that any type of driver device can be used and since the device of Whitcher et al is shock resistant and versatile, wherein stopping or modifying the power from the inverter is considered "controlling the inverter"; and in either case to employ a clamshell-type case, as these are notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display, official notice of which has already been taken, thus producing a device such as claimed.

Claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh. Pederson et al teach a handheld device which emits light suitable for ocular therapy using LEDs as tile illumination source. Marsh teaches the use of an inverter and multiple CCFLs and reflectors in place of LEDs in a light output module. It would have been obvious to the artisan of ordinary skill to employ the inverter and CCFLs of Marsh in the device of Pederson et al, since these provide more uniform brightness, as taught by Marsh, and to employ parabolic reflectors with the CCFLs at the focus thereof, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides maximum transfer of the light in the desired direction, to configure the device to have a maximum weight of four pounds, since this is not critical; is well within the skill of one having ordinary skill in the art, as the originally filed

disclosure provides no particular materials, arrangements, or devices which enable the achievement of such a weight; and provides no unexpected result, and because Pederson et al state that the weight should be minimized, thus producing a device such as claimed.

Claims 63 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh as applied to claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92, and further in combination with Terman et al. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming and control devices of Terman et al in the combined device of Pederson et al and Marsh, since these provide lighting which is appropriate to treat the conditions sought to be treated by Pederson et al, thus producing a device such as claimed.

Applicant's arguments filed July 23, 2007 have been fully considered but they are not persuasive.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

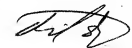
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER